



FEDERAL ELECTION COMMISSION  
Washington, DC 20002

Marc E. Elias, Esq.  
Perkins Coie  
700 13<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20005

AUG 10 2018

RE: MUR 7202  
Hillary for America and Jose H. Villarreal,  
as Treasurer

Dear Mr. Elias:

On December 6, 2016, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, by Hillary for America and Jose H. Villarreal, in his official capacity as treasurer (the "Committee"). On July 31, 2018, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe the Committee violated 52 U.S.C. § 30116(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Christopher L. Edwards, the attorney assigned to this matter, at (202) 694-1568.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen", is written over a horizontal line.

Mark Allen  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jill Stein for President and Steven Welzer in MUR 7202  
his official capacity as treasurer  
Hillary for America and Jose Villarreal in his  
official capacity as treasurer

### I. INTRODUCTION

The Complaint alleges that Jill Stein for President's ("JSP's") petition to the State of Wisconsin for a recount resulted in excessive, in-kind contributions to Hillary for America ("HFA"), Hillary Clinton's principal campaign committee for the 2016 presidential election, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint further alleges that HFA accepted these contributions by coordinating with JSP, and alleges that donors to JSP for the recount who also contributed to HFA may have made excessive contributions to HFA

### II. FACTUAL AND LEGAL ANALYSIS

#### A. Factual Background

Jill Stein was the Green Party's candidate for President of the United States during the 2016 general election.<sup>1</sup> She received 1.07% of the vote and failed to win any Electoral College votes.<sup>2</sup> After the election, Stein announced her intention to challenge the presidential election results in Wisconsin, Michigan, and Pennsylvania.<sup>3</sup> JSP subsequently began raising money to effectuate recounts in those states, and ultimately raised more than \$7,000,000 for the recount

<sup>1</sup> See FEC Form 2, Statement of Candidacy, Jill Stein (July 9, 2015).

<sup>2</sup> See <https://transition.fec.gov/pubrec/fe2016/2016presgeresults.pdf>.

<sup>3</sup> See Compl. at 5; see also *Greens Demand Recounts in Wisconsin, Michigan, and Pennsylvania*, [http://www.jill2016.com/greens\\_demand\\_recounts](http://www.jill2016.com/greens_demand_recounts) (last visited Feb. 21, 2018) ("*Greens Demand Recounts*, [www.jill2016.com](http://www.jill2016.com)").

1 effort.<sup>4</sup> JSP filed a recount petition with the Wisconsin Election Commission (“WEC”), and a  
2 recount was conducted in that state.<sup>5</sup> Although JSP attempted to have recounts conducted in  
3 Pennsylvania and Michigan, both of these attempted recounts were stopped by judicial order.<sup>6</sup>

4 The Complaint alleges that JSP’s expenditures to further the recount should be considered  
5 excessive, in-kind contributions to HFA because Hillary Clinton was the only candidate who had  
6 a chance of benefitting from the Wisconsin recount and, as such, the recount and corresponding  
7 activities were done to benefit her.<sup>7</sup> The Complaint further alleges that JSP and HFA  
8 coordinated the Wisconsin recount efforts, and that HFA therefore accepted JSP’s excessive  
9 contributions.<sup>8</sup> In support, the Complaint argues that “public interviews and records” show that  
10 members of HFA staff met with members of JSP staff, who urged HFA to request recounts.<sup>9</sup>  
11 Lastly, the Complaint alleges that because JSP was conducting the recount for Clinton,  
12 contributors to HFA who also gave to JSP for the recount potentially made excessive  
13 contributions to HFA.<sup>10</sup>

<sup>4</sup> See 2016 Year-End Report, Jill Stein for President; *see also Greens Demand Recounts*, [www.jill2016.com](http://www.jill2016.com) (“We need your help to make sure your votes were counted accurately on Election Day. Please donate now to help maintain integrity in our elections. This effort to ensure election integrity is in your hands! In true grassroots fashion, we’re turning to you, the people, and not big-money corporate donors to make this happen.”)

<sup>5</sup> See Compl. at 2; *see also Jill Stein Files Recount Petition in Wisconsin* (Nov. 25, 2016), <http://www.jill2016.com/recountfilingwi>. JSP disclosed a \$3,499,689 recount filing fee to Wisconsin on November 29, 2016. See 2016 Year-End Report at 298, Jill Stein for President. A separate Complaint alleges that foreign nationals contributed to Stein’s recount effort. See MUR 7205, Compl. at 5-7.

<sup>6</sup> See *Stein v. Cortes*, 223 F. Supp.3d 423, 426 (E.D. Pa. 2016); *Attorney Gen. v. Bd. of State Canvassers*, 318 Mich. App. 242, *appeal withdrawn*, 500 Mich. 907, 887 N.W.2d 785 (2016).

<sup>7</sup> Compl. at 1-4.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* According to the Complaint, the Clinton campaign publicly declared its support for the recount and joined JSP in a lawsuit petitioning the State of Wisconsin for a hand recount. *Id.* at 2. HFA responded that it “had not planned to exercise this option” but after JSP initiated the recount, decided “to participate in order to ensure the process proceed[ed] in a manner that [was] fair to all sides.” HFA Response at 2 (Jan. 27, 2017).

<sup>10</sup> See Compl. at 3-4.

1 JSP did not respond to the Complaint. HFA submitted a Response which denies any  
2 coordination with JSP.<sup>11</sup>

3 **B. Legal Analysis**

4 The Act and Commission regulations define the terms “contribution” and “expenditure”  
5 to include any gift, loan, or payment of money or anything of value for the purpose of  
6 influencing a federal election.<sup>12</sup> Funds provided for recounts, however, are not contributions  
7 because Commission regulations except gifts, loans, or payments made with respect to a recount  
8 of the results of a Federal election from the definitions of “contribution” and “expenditure.”<sup>13</sup>  
9 Accordingly, while recount funds raised by federal candidates are subject to the Act’s soft  
10 money provisions and thus the limitations, prohibitions, and reporting requirements of the Act,<sup>14</sup>  
11 “donations to a Federal candidate’s recount fund will not be aggregated with contributions from  
12 those persons to the Federal candidate for the general election.”<sup>15</sup>

13 The exceptions for recount funds from the definitions of both “contribution” and  
14 “expenditure” are material to each of the allegations here, *i.e.*, that JSP made in-kind

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<sup>11</sup> HFA Resp.

<sup>12</sup> 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i); 11 C.F.R. §§ 100.52(a), 100.111(a). The Act prohibits any person from making, and any candidate or committee from knowingly accepting, contributions in excess of the limits. *See* 52 U.S.C. §§ 30116(a), (f). Candidate committees are permitted to contribute a maximum of \$2,000 to other candidate committees. 52 U.S.C. § 30102(e)(3)(B).

<sup>13</sup> 11 C.F.R. §§ 100.91, 100.151.

<sup>14</sup> *See* 52 U.S.C. § 30125(e)(1)(A) (setting out “soft money” restrictions applicable to candidates); Advisory Op. 2006-24 (NRSC and DSCC).

<sup>15</sup> Advisory Op. 2006-24 at 6 (noting that recount regulations since 1977 are premised on conclusion that recounts are “in connection with” federal elections); *see also* Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 40 (1977) (recounts, though “related to elections, are not Federal elections”); Advisory Op. 2010-18 (DFL) at n.1 (“Because ‘donations’ to a recount fund are not ‘contributions’ under Commission regulations, such donations are not aggregated with contributions from those same persons....”)

1 contributions to HFA in the form of recount activities, that HFA accepted those contributions,  
2 and that HFA accepted excessive contributions from individual contributors via aggregated  
3 contributions to both JSP's recount effort and to HFA. Because donations or disbursements for  
4 recount activity are neither contributions nor expenditures, JSP's disbursements for recount  
5 activity do not constitute an excessive contribution to HFA as a result of any of the theories  
6 advanced in the Complaint, even if, as alleged, the recount benefited Clinton.<sup>16</sup>

7 Further, though the Act provides that expenditures made in coordination with a candidate  
8 "shall be considered to be a contribution" to that candidate,<sup>17</sup> under Commission regulations,  
9 "expenditures" subject to the coordination rules are limited to those not "otherwise exempted  
10 under 11 C.F.R. part 100, subparts C or E."<sup>18</sup> Because the exceptions from "contribution" and  
11 "expenditure" for recount activities are among such exemptions "under 11 C.F.R. part 100,  
12 subparts C or E," JSP's recount activity could not have constituted a coordinated contribution or  
13 expenditure, even if the recount activity was coordinated with HFA as alleged.<sup>19</sup>

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<sup>16</sup> See 11 C.F.R. §§ 100.91, 100.151. Moreover, there is no allegation that, absent aggregation with general election contributions, any individual donor to JSP's recount efforts exceeded the applicable amount limitations for a recount donation. See 52 U.S.C. §§ 30116(a)(1)(A), 30125(e)(1)(A); 11 C.F.R. § 110.1(b)(1); Advisory Op. 2006-24 at 6 (explaining that soft money restrictions limit donations to candidate's recount fund or account to the Act's amount limitations).

<sup>17</sup> 52 U.S.C. § 30116(a)(7)(B).

<sup>18</sup> 11 C.F.R. § 109.20(b); see also Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 426 (Jan. 3, 2003) (explaining that, notwithstanding the coordination rule, the exceptions to the definition of "contribution" and "expenditure" "continue to apply"); Advisory Op. 2006-24 at 9 (explaining that a state party committee may "fully coordinate" recount activities with a candidate because party coordinated spending rules do not apply to recount fund).

<sup>19</sup> Even if coordinated recount activity could constitute a contribution or expenditure, the record does not provide a sufficient basis for believing that JSP and HFA coordinated for purposes of the recount, and HFA expressly denies that such coordination occurred. Hillary for America Resp. at 1-2.

1           Lastly, because donations for recount activity are not contributions and are not  
2 aggregated with general election contributions,<sup>20</sup> contributors to HFA who also donated to JSP  
3 for the recount could not have made excessive contributions to HFA via those recount donations,  
4 as alleged.

5           Accordingly, the Commission finds no reason to believe that JSP violated 52 U.S.C.  
6 § 30102(e)(3)(B) by making excessive contributions or that HFA violated 52 U.S.C. § 30116(f)  
7 by accepting excessive contributions.

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<sup>20</sup> See 11 C.F.R. §§ 100.91, 100.151. See also Advisory Op. 2006-24 at 6; Advisory Op. 2010-18 at n.1.